



INTERIOR BOARD OF INDIAN APPEALS

Adrainne N. Llanaeza v. Billings Area Director, Bureau of Indian Affairs

29 IBIA 296 (08/28/1996)

Related Board case:
29 IBIA 298



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADRAINNE N. LLANEZA,
Appellant

v.

BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 96-104-A
:
:
: August 28, 1996

This is an appeal from a June 11, 1996, decision of the Billings Area Director, Bureau of Indian Affairs, concerning payment of a claim under the Old Age Assistance Claims Settlement Act, 25 U.S.C. §§ 2301-2307 (1994). A copy of appellant's July 2, 1996, notice of appeal, together with the administrative record, was transmitted to the Board by the Area Director and was received by the Board on July 22, 1996.

The record transmitted by the Area Director showed that appellant received the Area Director's decision on June 14, 1996. It also showed that the Area Director's June 11, 1996, decision correctly informed appellant that she was to file her notice of appeal with the Board and provided the Board's correct address. However, even though the copy of appellant's notice of appeal sent by the Area Director showed that it was addressed to the Board, the Board had not, as of July 23, 1996, received the original of the notice.

Therefore, on July 23, 1996, the Board ordered appellant to show that she had filed a timely notice of appeal. The Board stated that, in order to make such a showing, appellant must show that she mailed a notice of appeal to the Board on or before July 15, 1996.

Appellant's response was received on August 26, 1996. Appellant submits copies of several documents reflecting her communications with the Billings Area Office about the matter addressed in the Area Director's decision. However, none of these documents has any bearing on the question of whether she filed a timely notice of appeal with the Board. Appellant does not even allege that she mailed her notice of appeal to the Board, let alone show that she did so.

The Board finds that appellant has failed to file a timely notice of appeal. The Area Director's decision provided correct appeal instructions. Appellant did not follow those instructions but, instead, apparently filed her notice of appeal with the Area Director. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an

official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Simon v. Sacramento Area Director, 29 IBIA 59 (1996); After Buffalo v. Acting Billings Area Director, 28 IBIA 131, recon. denied, 28 IBIA 159 (1995).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed as not being timely filed. Accordingly, the Area Director's June 11, 1996, decision is final for the Department of the Interior.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge